

HON. THOMAS S. ZILLY

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

<p>MARY JANE MEUNIER,</p> <p>Plaintiff,</p> <p>vs.</p> <p>GROUP HEALTH COOPERATIVE and AETNA LIFE INSURANCE COMPANY,</p> <p>Defendants.</p>	<p>Case No. 2:13 cv-01046-TSZ</p> <p>REPLY BRIEF SUPPORTING PLAINTIFF'S SUMMARY JUDGMENT MOTION AGAINST DEFENDANTS GHC AND AETNA</p> <p>NOTE FOR MOTION CALENDAR: Friday, March 21, 2014</p>
---	--

As an employee of GHC, David Meunier had to actively work 30 continuous days in order to enroll in GHC's life insurance benefit plan. David enrolled in GHC'S life insurance coverage through Aetna effective January 1, 2009. Therefore, it reasonably follows that David had actively worked 30 continuous days for GHC between November 9, 2008 (employment hire date) and January 1, 2009 (life insurance enrollment

1 date) and that he was eligible for life insurance coverage from Aetna. Otherwise, GHC
 2 would not have enrolled David in its life insurance plan and GHC would not have
 3 deducted and paid life insurance premiums on David to Aetna.
 4

5 During her March 6, 2014 Rule 30(b)(6) deposition, Dawn Chiasson testified as
 6 the corporate representative of Group Health Cooperative in pertinent part as follows:
 7

8 **0007**

9 19 Q. I understand, Ms. Chiasson, that you are
 20 20 appearing today on behalf of Group Health
 10 21 Cooperative.
 11 22 Is that correct?
 12 23 A. Yes, it is.

0009

13 1 Q. What is your position or job with Group Health
 14 2 Cooperative, Ms. Chiasson?
 15 3 A. I am a senior benefit analyst at Group Health.
 16 15 Q. As senior benefit analyst for Group Health, do
 17 16 you deal with life insurance benefits for its
 18 17 employees?
 19 18 A. Yes, I do.

0010

18 12 Q. Did you ever work on any matters involving David
 19 13 Meunier in your position as senior benefit
 20 14 analyst?
 21 15 A. Yes, I did.

0014

22 11 Q. Exhibit 39, does it have on the bottom the Bates
 23 12 stamp number of AET, short for Aetna, 000151?
 24 13 A. Yes, it does.
 25 14 Q. And could you tell us what is this document?
 26 15 A. This is a screen print of our Lawson HRIS system
 27 16 and specifically our -- the life insurance
 28 17 benefit that it appears Mr. Meunier was enrolled
 18 in.

0018

10 Q. All right. What does "employee life benefits"

1 11 mean? Can you describe it in particularity,
2 12 please --
3 15 A. Sure. It involves accidental death and
4 16 dismemberment -- we have an accident -- a basic
5 17 accidental death and dismemberment policy; we
6 18 have a basic life policy; and, in this case,
7 19 David was -- had -- it looks like he had elected
8 20 a supplemental life benefit as well. That is a
9 21 voluntary benefit. The two basics employer-
10 22 covered and employer-paid, the supplemental
11 23 benefit is employee-paid.
12 **0019**
13 7 Q. The "basic life" refers to a life insurance
14 8 benefit provided to employees of Group Health;
15 9 is that correct?
16 10 A. That is correct.
17 11 Q. Does this document, Exhibit 39, show that
18 12 David A. Meunier was covered for the basic life
19 13 insurance benefit provided by Group Health to
20 14 its employees?
21 19 A. Group Health does not make coverage decisions.
22 20 We do enrollment -- we handle the enrollment
23 21 piece, and it does appear that David Meunier was
24 22 enrolled in the basic life benefit and the
25 23 supplemental life benefit and the accidental --
26 24 the basic accidental death and dismemberment
27 25 benefit.
28 **0020**
1 Q. "Enrollment" means what with
2 respect to an employee of Group Health
3 Cooperative like David Meunier?
4 A. "Enrollment" means that they were eligible for
5 benefits, that they actually took steps to elect
6 those benefits.
7 So, in this instance, David Meunier was an
8 employee of Group Health and took active steps
9 to enroll in benefits.
10 Q. So, as we sit here today, it is clear that
11 David A. Meunier was enrolled as an employee of
12 Group Health Cooperative in its basic life
13 insurance benefit program, correct?

1 14 A. It appears that he did enroll, yes.
2 15 Q. The premium for the basic life insurance
3 16 coverage of David Meunier was paid by his
4 17 employer, Group Health; is that correct?
5 18 A. For the -- I'm sorry, for the basic life
6 19 benefit?
7 20 Q. Yes.
8 21 A. Yes, it would have been if he was -- if he was
9 22 enrolled in the coverage, then, yes, that would
10 23 have been paid for by Group Health.
11 **0023**
12 11 Q. Do you know what Exhibit 31 is -- Exhibit 21 is,
13 12 excuse me?
14 13 A. It's the 30(b)(6) deposition document.
15 14 Q. And did you review that before you came to
16 15 testify today?
17 16 A. I did.
18 17 Q. Do you see Paragraph 4 on the top of Page 3 of
19 18 Exhibit 21?
20 19 A. Which page? Line 4, is that what you're
21 20 referring to?
22 24 Q. I'll read it out loud. "Was David covered for
23 25 group life insurance while he was employed by
24 **0024**
25 1 GHC?"
26 2 Do you see that?
27 3 A. I do see that.
28 4 Q. Are you prepared to testify as the 30(b)(6)
designee of Group Health today about that
subject matter?
5 7 A. I am.
6 8 Q. So I ask you: Was David covered for group life
7 9 insurance while he was employed by Group Health
8 10 Cooperative?
9 11 A. I believe I answered the question when I told
10 12 you that I -- I don't make coverage
11 13 determinations. I can see enrollment, and it
12 14 appears that he was enrolled in the benefit. I
13 15 don't know if he was covered.
14 **0026**
15 1 Q. You said David Meunier also enrolled for

1 2 supplemental life insurance coverage through
2 3 Group Health.
3 4 Was that correct?
4 5 A. It appears that he was enrolled in that
5 6 coverage, yes.
6 7 Q. And Group Health had contracted with Aetna Life
7 8 Insurance Company to provide that supplemental
8 9 life insurance benefit to the employees of Group
9 10 Health, such as David Meunier, right?
10 11 A. It -- yes, Group Health does contract with -- or
11 12 did contract with Aetna Life Insurance to
12 13 provide coverage to eligible employees.
13 14 Q. Is that also the case with respect to Group
14 15 Health contracting with Aetna Life Insurance
15 16 Company to provide the basic life insurance
16 17 benefit to Group Health's employees?
17 18 A. Yes, that is correct.
18 19 Q. And I think I'm hearing you use the past tense.
19 20 Is Aetna still the life insurance provider for
20 21 Group Health's employees, or was that only in
21 22 the past?
22 23 A. That contract terminated in -- at the end of
23 24 2011.
24 25 Q. So are you aware that David Meunier
25 26 **0027**
26 27 unfortunately passed away in 2010?
27 28 A. Yes, I am.
28 1 Q. And when he passed away in 2010, at that time
1 2 period Group Health had a contract with Aetna
2 3 whereby Aetna provided basic life and
3 4 supplemental life insurance benefits to the
4 5 employees of Group Health, correct?
5 6 A. That is correct.
6 7 Q. Did Group Health Cooperative pay premiums to
7 8 Aetna for David Meunier's enrolled basic life
8 9 insurance coverage?
9 10 A. I don't have personal knowledge whether they --
10 11 we paid for that or not because I don't do the
11 12 billing for the benefits. But if he was
12 13 enrolled in the coverage, then likely, yes,
13 14 there would have been premiums paid for that
14 15
15 16

1 17 coverage.
2 18 Q. Did Group Health Cooperative withhold premiums
3 19 from David Meunier's pay as an employee of Group
4 20 Health and pay those premiums to Aetna for
5 21 David's supplemental life insurance coverage?
6 22 A. Again, I don't do the billing for benefits, but
7 23 I would assume that if he was enrolled and --
8 24 and -- and active on the plan, then, yes, those
9 25 premiums would have been paid for that coverage.
10 **0031**
11 3 Q. What is the "Start" date and the "Stop"
12 4 date for David Meunier's basic life insurance
13 5 coverage as shown by Exhibit 39?
14 9 A. It appears that he was enrolled from January 1st
15 10 of 2009 to February 28th of 2009.
16 11 Q. And premiums were paid based on
17 12 that enrolled life insurance coverage to Aetna;
18 13 is that correct?
19 14 A. Again, I don't do benefit billing, but, to the
20 15 best of my knowledge, that would be the case.
21 **0037**
22 12 Q. It's my understanding that your testimony today
23 13 is that David Meunier was enrolled as an
24 14 employee of Group Health Cooperative for both
25 15 the basic life component of the benefit coverage
26 16 and the supplemental life component of the
27 17 benefit coverage.
28 18 Is my understanding correct?
19 19 A. It appears that he was enrolled in those
20 20 benefits, as well as the basic AD&D benefit.
21 **0038**
22 11 Q. And we do know today as we sit here that Group
23 12 Health did pay premiums to Aetna Life Insurance
24 13 Company for David Meunier's group life coverage,
25 14 basic life coverage, and his supplemental
26 15 individual life coverage, correct?
27 16 A. It appears that he was enrolled, and if he was
28 17 enrolled, then my assumption would be that, yes,
18 premiums would have been paid for that coverage.
19 Q. To Aetna Life Insurance Company?
20 A. To Aetna Life Insurance Company.

1 **0039**
2 **0047**
3 11 Q. When David Meunier underwent surgery on
4 12 November 26th, 2008, he was enrolled for the
5 13 basic life insurance benefit and the
6 14 supplemental life insurance benefit of Group
7 15 Health.
8 16 Isn't that what you told me before?
9 17 A. No. His enrollment did not start until
10 18 January 1st of 2009.
11 21 Q. What is the basis for your assertion that his
12 22 enrollment did not start until January 1, 2009?
13 23 A. Because if he was -- if he was enrolled in the
14 24 benefit, then benefits don't start until the
15 25 first of the month following one month of
16 **0048**
17 1 continuous employment.
18 **0058**
19 1 Q. Does 1.0 FTE mean 100 percent full-time?
20 2 A. Yes. It means he worked 40 hours per week.
21 3 Q. Full-time, right?
22 4 A. Correct.
23 5 Q. The next sentence says, "To participate in a
24 6 benefit plan, new employees must enroll within
25 7 30 days of hire into an eligible position."
26 8 Did I read that correctly?
27 9 A. Yes.
28 10 Q. Is it your testimony today that David A. Meunier
 11 enrolled into the basic life and supplemental
 12 life insurance benefit plans of Group Health
 13 Cooperative on January 1, 2009?
 14 A. He was -- he appeared to be enrolled in our
 15 plans effective January 1 of 2009. The date
 16 that he actively enrolled would have been a
 17 different date.
 18 Q. Before or after January 1 of '09?
 19 A. Before.
 20 Q. What?
 21 A. Before, within 30 days of his hire.
 22 Q. Did David Meunier enroll in the basic life and
 23 supplemental life insurance benefit plan of

1 24 Group Health within 30 days of his hire date of
2 25 Monday, November 10th, 2008?
3 0059
4 1 A. Yes, he did.
5 2 Q. What is the basis for that statement?
6 3 A. Um, he wouldn't have been enrolled if he didn't
7 4 actively do something to effectively enroll in
8 5 coverage. He had to take an action.
9 0077
10 21 Q. As you sit here today, do you deny the fact
11 22 that David Meunier had a laptop computer of
12 23 Group Health Cooperative until his wife, now his
13 24 widow, physically gave it back to Pat Anunsen at
14 25 the demand of Pat Anunsen on January 16th of
15 0078
16 1 '09?
17 2 A. I cannot confirm or deny that.
18 3 Q. Likewise, you cannot confirm or deny whether
19 4 David A. Meunier used his Group Health
20 5 Cooperative laptop computer between November 21,
21 6 2008, and January 16, 2009, when the laptop
22 7 computer was returned to Mr. Anunsen, is that
23 8 not correct?
24 9 A. I would not be able to confirm or deny that.
25 10 Q. Can you confirm or deny the fact that David
26 11 Meunier and Patrick Anunsen had agreed, as
27 12 employee and boss, that David Meunier could take
28 13 Thanksgiving weekend off in order to spend it
29 14 with his family and to celebrate his daughter's
30 15 birthday that happens to fall within a day or
31 16 two of the holiday? Can you deny that fact?
32 17 A. I cannot confirm or deny that.
33 18 Q. Do you ever take some time off from work from
34 19 your benefit analyst position at Group Health to
35 20 spend Thanksgiving weekend with your family?
36 21 A. Yes.
37 22 Q. And when you spend Thanksgiving weekend from
38 23 time to time with your family, you are still
39 24 considered an active full-time employee of Group
40 25 Health, entitled to your life insurance benefit

1 **0079**
2 1 coverage, right?
3 2 A. As long as I'm actively employed, yes.
4 3 Q. But you don't know whether David Meunier, after
5 4 his surgery on November 26, 2009, worked for
6 5 Group Health using his laptop, do you?
7 6 A. I do not -- I cannot confirm or deny the dates
8 7 that he would have used that laptop.
9 16
10 19
11 24 Q. You do not know whether David
12 25 Meunier, after he got out of the hospital,
13 **0080**
14 1 continued to work for Group Health using his
15 2 laptop computer, do you?
16 3 A. I don't. His -- his boss asked him not to, or
17 4 at least said, "Your access has been turned
18 5 off," but, no, I cannot confirm or deny he had
19 6 done any work at that point.
20 7 Q. You do a lot of work as a senior benefit analyst
21 8 for Group Health where you're not necessarily
22 9 using your access to the computer system 24/7,
23 10 right?
24 11 A. Sure.
25 12 Q. There's times when you actively work full-time
26 13 for Group Health when you're not using computer
27 14 access whatsoever?
28 15 A. Sure, if I'm in a meeting or attending functions
 16 or what have you.
 17 Q. Phone calls, right?
 18 A. Sure.
 25 Q. And, in fact, Group Health made payroll
 0085
 1 deductions from David Meunier's earnings to pay
 2 life insurance benefit premiums for his life
 3 insurance benefit expenses to Aetna; is that
 4 correct?
 8 A. It's my understanding that deductions were taken
 9 for the period of time that he was on short-term
 10 disability, which would have been from
 11 January 1st of 2009 through February 28th of

1 12 2009. Deductions are taken in the month in
2 13 which you are enrolled in the benefit.
3 14 Q. And that time period that you just told us
4 15 exceeded 30 continuous days, correct?
5 16 A. From January 1st through February 28th of 2009
6 17 is more than 30 days, correct.
7 0086
8 11 Q. That statement does not indicate that David
9 12 Meunier's Group Health Cooperative laptop
10 13 computer was not working, correct?
11 14 A. That's correct.
12 0087
13 12 Q. You do not know whether David Meunier's log-on
14 13 was subsequently reactivated or not, correct?
15 16 A. I have not seen any documentation to state that
16 17 it had been reinstated.
17 18 Q. You do not know one way or the
18 19 other?
19 20 A. That's correct.
20 0098
21 7 Q. Ms. Chiasson, if we
22 8 could look at Exhibit 27, please.
23 9 A. Sure. [The witness complies.] Okay.
24 10 Q. Could you identify that for us, please?
25 11 A. It is a Group Health Earnings Statement for
26 12 David Meunier.
27 13 Q. And this is for the pay period of December 21,
28 14 '08, through January 5 of 2009; is that correct?
29 15 A. Correct.
30 16 Q. All right. Now, does this show that David
31 17 Meunier has life insurance benefit coverage
32 18 through Group Health?
33 23 A. It shows that he was -- he had a deduction taken
34 24 for a base life insurance benefit for this pay
35 25 period.
36 0099
37 16 Q. The next one is "GTL," and someone has written
38 17 in handwriting, I don't know who, "Group Term
39 18 Life?"
40 19 A. Right. It stands --
41 20 Q. Is "GTL" an abbreviation for group term life?

1 21 A. It is, and this would be in recognition that
2 22 there is imputed income value for a life
3 23 benefit.
4 24 Q. All right. So this confirms that David Meunier
5 25 was enrolled with Group Health for its base life
6 **0100**
7 1 insurance benefit?
8 2 A. It confirms that he had a deduction taken -- or,
9 3 sorry, an employer contribution for a base life
10 4 benefit.
11 5 Q. And the base life benefit for which the
12 6 employer, Group Health, contributed was a group
13 7 life insurance benefit --
14 8 A. That is correct.
15 9 Q. -- as opposed to an individual life insurance
16 10 benefit?
17 11 A. That is correct.
18 **0101**
19 7 Q. Because David Meunier was enrolled for life
20 8 insurance benefits, right?
21 9 A. We had enrollment for David Meunier, and we
22 10 looked at those records, yes.

(Emphasis added.)

Since the Aetna life insurance policy does not define what "active and continuous" employment is, Aetna is bound by GHC's January 1, 2009 life insurance plan enrollment determination on David. GHC's conduct is an admission that binds Aetna. Aetna accepted the life insurance premiums paid on David and Aetna has not refunded them.

The U.S. Department of Labor recognizes that life insurance is not considered "medical care," nor are disability benefits; COBRA does not cover plans that provide only life insurance or disability benefits.

U.S. Department of Labor Employee
Benefits Security Administration (EBSA),
An Employee's Guide to Health Benefits
Under COBRA: *The Consolidated Omnibus
Budget Reconciliation Act of 1985* (Nov. 2012),
www.dol.gov/ebsa/publications/cobraemployee.html.

This booklet explains your rights under COBRA to a
temporary extension of employer-provided group health
coverage, called COBRA continuation package.

David and Mary Jane Meunier reasonably understood the COBRA election notice
sent by Benefit Concepts, Inc., GHC's COBRA vendor, to deal with health insurance
conversion, not life insurance conversion. GHC and Aetna breached their fiduciary duty
to properly assist the Meuniers in converting David's group life insurance coverage to
individual life insurance coverage.

Respectfully submitted this 21st day of March, 2014.

/s/ Jeffrey P. Clark

Jeffrey P. Clark
WI State Bar ID No. 1009316
REINHART BOERNER VAN
DEUREN s.c.
1000 North Water Street, Suite 1700
Milwaukee, WI 53202
(414) 298-8131
(414) 298-8097 (facsimile)
E-mail: jclark@reinhardtllaw.com
Attorney for Plaintiff Mary Jane
Meunier

/s/ Joseph L. Koplin

Joseph L. Koplin, 7683
MOSCHETTO KOPLIN, INC., P.S.
1800 112th Avenue NE, Suite 300#
Bellevue, WA 98004-2954
(425) 641-6000
(425) 641-1745 (facsimile)
E-mail: joe@moschettokoplin.com
Attorney for Plaintiff Mary Jane Meunier